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R.A., Appellant)	
)	
and)	Docket No. 10-844
)	Issued: December 22, 2010
U.S. POSTAL SERVICE, GENERAL MAIL)	
FACILITY, White Plains, NY, Employer)	
)	

Thomas S. Harkins, Esq., for the appellant
Office of Solicitor, for the Director

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 3, 2010 appellant filed an appeal from a January 11, 2010 decision of the Office of Workers' Compensation Programs terminating her compensation benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUES

The issues are: (1) whether the Office properly terminated appellant's compensation benefits effective July 7, 2008 on the grounds that residuals of her accepted cervical sprain had ceased; and (2) whether appellant established that she had a continuing disability on and after July 7, 2008 related to the accepted cervical strain.

On appeal, counsel asserts that the Office disregarded medical evidence from appellant's attending physicians, that it should have accepted additional conditions and that it committed various procedural errors following the Board's June 29, 2009 order remanding the case.

FACTUAL HISTORY

This is appellant's second appeal before the Board in this case. By order dated November 27, 2009,¹ the Board vacated the Office's June 29, 2009 decision and remanded the case to the Office for a merit review. The law and the facts of the case as set forth in the Board's prior decision and order are incorporated by reference. The relevant factual history appears below.

The Office accepted that on January 8, 2006 appellant, then a 56-year-old clerk, sustained a cervical strain with an aggravation of a preexisting neck condition² when she lifted a tub of mail. Appellant stopped work that day and returned to limited-duty work on January 20, 2006. The Office also accepted a recurrence of disability commencing September 15, 2006. Appellant stopped work on September 15, 2006 and did not return. She received total disability compensation on the periodic rolls beginning September 29, 2006.

Beginning on May 19, 2006, appellant was followed by Dr. David Gamburg, an attending physician Board-certified in anesthesiology and interventional pain management. In reports through February 21, 2007, Dr. Gamburg found appellant totally disabled due to degenerative cervical disc disease. He administered periodic facet block injections. In September 27 and October 25, 2006 form reports, Dr. Gamburg checked a box "yes" indicating his support for a causal relationship between appellant's symptoms and the January 8, 2006 injury.³

On February 2, 2007 the Office referred appellant, the medical record and a statement of accepted facts to Dr. Louis Nunez, a Board-certified orthopedic surgeon, for a second opinion examination. In a March 1, 2007 report, Dr. Nunez diagnosed idiopathic cervical osteoarthritis with a C5-6 disc herniation. He opined that the accepted cervical strain was a soft tissue injury that aggravated nonoccupational spinal degeneration. Dr. Nunez found appellant able to perform part-time limited duty.

The Office found a conflict between Dr. Gamburg for appellant, and Dr. Nunez for the government, regarding whether the accepted January 8, 2006 injury caused or aggravated any other condition or caused ongoing residuals. To resolve the conflict, it appointed Dr. Robert Mantica, a Board-certified orthopedic surgeon, as the impartial medical examiner. The Office provided a statement of accepted facts and a copy of the medical record. Dr. Mantica submitted a March 27, 2008 report reviewing the statement of accepted facts and the medical record. He noted findings on examination including limited cervical motion, normal grip strength and tenderness to percussion of the neck and trapezial ridges. Dr. Mantica diagnosed fibromyalgia, degenerative cervical disc disease and osteoarthritis of the cervical spine. He found that appellant had fully recovered from the January 8, 2006 soft tissue cervical strain. Dr. Mantica

¹ Docket No. 09-2009 (issued November 27, 2009).

² Under File No. xxxxxx308, the Office accepted that appellant sustained a cervical sprain on January 10, 2004 due to lifting at work. Appellant returned to full duty following the injury. An October 25, 2005 cervical magnetic resonance imaging (MRI) scan showed a C4-5 disc herniation and disc bulges from C5 to T1. This claim is not before the Board on the present appeal.

³ Dr. Gamburg performed cervical facet rhizotomies on August 9 and October 5, 2007.

explained that the accepted strain did not cause or aggravate a herniated cervical disc, degenerative disc disease, foraminal stenosis, disc space narrowing or fibromyalgia. He opined that appellant could perform full-time limited duty, with restrictions related to nonoccupational osteoarthritis and degenerative disc disease.

Appellant submitted notes from a nurse practitioner dated from January 2 to April 18, 2008.

By notice dated May 21, 2008 and reissued June 3, 2008, the Office advised appellant that it proposed to terminate her compensation on the grounds that the work-related conditions had ceased without residuals, based on Dr. Mantica's opinion.

In a May 31, 2008 letter, appellant contended that a January 10, 2004 work incident caused herniated cervical discs although the Office only accepted a cervical strain. She asserted that she remained disabled for work due to the combined effects of the January 10, 2004 and January 8, 2006 injuries. Appellant alleged that Dr. Mantica did not perform a physical examination. She submitted an August 13, 2004 cervical MRI scan report showing an extruded C4-5 disc and disc bulges from C5 to T1. Appellant also provided a June 6, 2008 report from Dr. Gamburg reviewing appellant's treatment history and recommending additional trigger point injections.

By decision dated and finalized on July 7, 2008, the Office terminated appellant's compensation and medical benefits effective that day, based on Dr. Mantica's opinion as the weight of the medical evidence.⁴

In an April 3, 2009 letter, counsel requested reconsideration. He asserted that additional reports from Dr. Gamburg established continuing residuals after July 7, 2008 and that the accepted injury caused additional conditions. Counsel also contended that Dr. Nunez and Dr. Mantica were not Board-certified physicians.⁵

Counsel submitted July 8 and August 7, 2008 chart notes from Dr. Gamburg regarding trigger point injections. In an October 22, 2008 report, Dr. Gamburg reiterated a history of injury and treatment. He diagnosed a cervical sprain, herniated C4-5 disc, disc bulges at C5-6 and C6-7, cervical facet syndrome, cervicgia and myalgia. Dr. Gamburg stated that appellant could perform light duty. He opined that "[t]his injury [was] related to the incident on January 8, 2006 and directly related [sic]."

By decision dated June 29, 2009, the Office denied reconsideration on the grounds that the evidence submitted failed to establish clear evidence of error. On August 3, 2009 appellant filed an appeal with the Board. On September 9, 2009 the Director filed a motion to remand. By order dated November 27, 2009, the Board vacated the Office's June 29, 2009 decision and remanded the case to the Office for issuance of a merit decision.

⁴ In an August 1, 2008 letter, counsel requested an oral hearing. He withdrew the request on September 19, 2008.

⁵ The Office issued an April 27, 2009 decision approving an attorney's fee request. This decision is not before the Board on the present appeal.

By decision dated January 11, 2010, the Office denied modification on the grounds that the evidence submitted was insufficient. It found that Dr. Gamburg's additional reports were insufficiently rationalized to establish continuing residuals of the accepted cervical strain or that the January 8, 2006 incident caused any other medical condition. The Office further found that Dr. Nunez and Dr. Mantica were both Board-certified orthopedic surgeons according to a database maintained by the American Board of Medical Specialties (ABMS).

LEGAL PRECEDENT -- ISSUE 1

Once the Office has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.⁶ Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.⁷

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁸ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁹

ANALYSIS -- ISSUE 1

The Office accepted that on January 8, 2006 appellant sustained a cervical strain with aggravation of a preexisting neck condition. Dr. Gamburg, an attending physician Board-certified in anesthesiology and pain management, found appellant disabled for work from May 19, 2006 onward due to degenerative disc disease with chronic pain. On two form reports, he checked a box "yes" indicating his support for causal relationship between the accepted cervical strain and appellant's ongoing condition.

On March 1, 2007 the Office obtained a second opinion report from Dr. Nunez, a Board-certified orthopedic surgeon, who opined that the accepted injury aggravated nonoccupational degenerative disc disease. It found a conflict between Dr. Gamburg, for appellant, and Dr. Nunez, for the government, regarding the nature and extent of the accepted cervical strain. To resolve the conflict, the Office obtained an impartial opinion from Dr. Mantica, a Board-certified orthopedic surgeon. In a March 27, 2008 report, Dr. Mantica opined that the accepted cervical strain resolved completely, without any residual effect on idiopathic disc herniations, cervical disc disease, foraminal stenosis, disc space narrowing, osteoarthritis and fibromyalgia. He noted work restrictions related only to appellant's nonoccupational conditions.

⁶ *Bernadine P. Taylor*, 54 ECAB 342 (2003).

⁷ *Id.*

⁸ *Roger G. Payne*, 55 ECAB 535 (2004).

⁹ *Pamela K. Guesford*, 53 ECAB 726 (2002).

Based on this report, the Office issued a notice of proposed termination on May 21, 2008. In response, appellant submitted a June 6, 2008 report from Dr. Gamburg reiterating previous diagnoses, and an imaging study performed prior to the accepted injury. The Office terminated appellant's compensation by July 7, 2008 decision, based on Dr. Mantica's opinion that the accepted injuries had resolved without residuals.

The Board finds that Dr. Mantica's opinion is sufficient to represent the weight of the medical evidence. It is detailed, well rationalized and based on a complete factual and medical history.¹⁰ Dr. Mantica thoroughly reviewed the medical record and statement of accepted facts. He provided rationale explaining that appellant's symptoms were not occupationally related. Dr. Mantica emphasized that appellant no longer had any work-related residuals and that therefore the accepted condition no longer disabled her for work. In contrast, Dr. Gamburg indicated his support for a continuing causal relationship by checking a box "yes" on two form reports. The Board has held that, without further explanation or rationale, a checked box on a form report is not sufficient to establish causation.¹¹

Dr. Mantica provided sufficient rationale, based on a complete and accurate medical history, to establish that the accepted cervical strain resolved. Thus, the Board finds that the Office met its burden of proof in terminating appellant's compensation benefits.

LEGAL PRECEDENT -- ISSUE 2

After termination or modification of benefits, is clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to the claimant. In order to prevail, the claimant must establish by the weight of reliable, probative and substantial evidence that he or she had an employment-related disability that continued after termination of compensation benefits.¹² For conditions not accepted by the Office as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation.¹³ The fact that, a condition's etiology is unknown or obscure, neither relieves appellant of the burden of establishing a causal relationship by the weight of the medical evidence, nor shifts the burden of proof of the Office to disprove an employment relationship.¹⁴

ANALYSIS -- ISSUE 2

Following the Office's July 7, 2008 decision terminating her compensation benefits, appellant submitted additional medical reports from Dr. Gamburg. Counsel asserted that these

¹⁰ *James R. Taylor*, 56 ECAB 537 (2005).

¹¹ *Calvin E. King*, 51 ECAB 384 (2000) (the Board held that form reports from a physician who checked a yes box indicating a causal relationship between the claimant's spinal stenosis and his employment had little probative value absent supporting rationale and were insufficient to establish causation). *Debra S. King*, 44 ECAB 203 (1992).

¹² *See Virginia Davis-Banks*, 44 ECAB 389 (1993).

¹³ *Alice J. Tysinger*, 51 ECAB 638 (2000).

¹⁴ *Judith J. Montage*, 48 ECAB 292 (1997).

reports established work-related residuals after July 7, 2008 and that the accepted injury caused additional conditions.

In July 8 and August 7, 2008 chart notes, Dr. Gamburg discussed trigger point injections. In an October 22, 2008 report, he diagnosed a cervical sprain, cervical disc bulges and herniations, cervical facet syndrome and myalgia. Regarding causal relationship, Dr. Gamburg opined that “[t]his injury [was] related to the incident on January 8, 2006 and directly related [sic].” However, he did not provide a medical explanation of the pathophysiologic relationship between the accepted cervical strain and the conditions observed on and after July 7, 2008.¹⁵ Also, Dr. Gamburg diagnosed cervical spine conditions that the Office did not accept. He did not provide sufficient rationale supporting a medical causal relationship between these conditions and work factors.¹⁶ Therefore, the additional reports are insufficiently rationalized to outweigh Dr. Mantica’s opinion or create a conflict of medical opinion. Also, Dr. Gamburg was on one side of the conflict resolved by Dr. Mantica. Subsequently submitted reports of a physician on one side of a resolved conflict of medical opinion are generally insufficient to overcome the weight of the impartial medical specialist or to create a new conflict of medical opinion.¹⁷

The Board finds that appellant submitted insufficient rationalized medical evidence to establish a causal relationship between her condition on and after July 7, 2008 and the accepted cervical strain. Appellant has failed to meet her burden of proof.

On appeal, counsel asserts that the January 11, 2010 decision disregarded Dr. Gamburg’s opinion and that the Office should have accepted additional conditions. As stated, Dr. Gamburg’s reports were insufficiently rationalized to establish continuing residuals after July 7, 2008 or that the January 8, 2006 work incident caused any condition other than the accepted cervical sprain. Counsel also contends that the Office committed various procedural errors following issuance of the Board’s June 29, 2009 order remanding the case for a merit review. The Board has reviewed the record thoroughly and finds no evidence of procedural error by the Office.

CONCLUSION

The Board finds that the Office met its burden of proof in terminating appellant’s compensation benefits on the grounds that the accepted cervical strain ceased without residuals. The Board further find that appellant did not meet her burden of proof in establishing a continuing work-related disability on and after the termination of her compensation and medical benefits on July 7, 2008.

¹⁵ *Mary E. Marshall*, 56 ECAB 420 (2005).

¹⁶ *Alice J. Tysinger*, *supra* note 13.

¹⁷ *Richard O Brien*, 53 ECAB 234 (2001).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 11, 2010 is affirmed.

Issued: December 22, 2010
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board